

1 MEREDITH N. LANDY (SBN 136489)
2 JOSHUA D. BAKER (SBN 214389)
3 O'MELVENY & MYERS LLP
4 2765 Sand Hill Road
5 Menlo Park, CA 94025
6 Telephone: (650) 473-2600
7 Facsimile: (650) 473-2601

8 Attorneys for Plaintiff
9 BERKELEY HEARTLAB, INC.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BERKELEY HEARTLAB, INC., a
California Corporation;

Plaintiff,

v.

BERKELEY HEART EUROPE A.S., a
Norwegian Corporation, PAUL L.
ECKBO, CHARLES L. DIMMLER III,
PGH, LTD., a Bermuda Corporation, and
Does 1-50;

Defendants.

Case No. C-07-2076-MMC

**STIPULATION AND [PROPOSED]
ORDER UNDER L.R. 16-2(d)
REGARDING RELIEF FROM CASE
MANAGEMENT SCHEDULE AND
SETTING PROSPECTIVE BRIEFING
SCHEDULE**

STIPULATION

WHEREAS, a Case Management Conference Order issued on or about May 1, 2007 (the "CMC Order") scheduling a Case Management Conference in this action to be held at 10:30 a.m. on July 27, 2007;

WHEREAS, the Case Management Conference was set on calendar automatically upon reassignment of this action from Magistrate Elizabeth D. Laporte without counsel for the parties confirming availability;

WHEREAS, both counsel of record for Plaintiff have previously-scheduled hearings in other cases that conflict directly with the Case Management Conference as currently scheduled;

WHEREAS, counsel for Plaintiff and Defendants have met and conferred regarding their availability to reschedule the Case Management Conference, in accordance with the CMC Order, the Standing Orders For Civil Cases Assigned to the Honorable Maxine M. Chesney, and Local Rule 16-2(d);

WHEREAS, Plaintiff filed a First Amended Complaint (“Amended Complaint”) in this action on or about July 3, 2007;

WHEREAS, Plaintiff believes that the filing of the Amended Complaint has mooted the Rule 12 motion Defendants previously filed against the previously-operative complaint, currently set for hearing at 9:00 a.m. on July 27, 2007, which Defendants do not concede;

WHEREAS, counsel for Plaintiff would have the same scheduling conflict with the 9:00 a.m. hearing on July 27, 2007 as with the 10:30 a.m. hearing on that same day, in the event that the earlier hearing were to go forward;

WHEREAS, pursuant to Federal Rules of Civil Procedure 6(a),(e) and 15(a), Defendant Dimmeler's response to the Amended Complaint must currently be filed on or before July 20, 2006;

WHEREAS, Defendant Dimmler has requested from Plaintiff an extension of time to August 6, 2007 to respond to the Amended Complaint;

WHEREAS, Plaintiff does not oppose Defendant's request for an extension of time to respond to the Amended Complaint;

1 WHEREAS, Defendants agree that Plaintiffs should also have additional time to oppose
2 any motions filed by Defendants (if any) in response to the Amended Complaint;

3 WHEREAS, Plaintiff and Defendants agree that it is desirable to conduct an orderly and
4 efficient schedule for case management and briefing in this action, and to coordinate the two for
5 the convenience of the Court and the parties;

6 WHEREAS, Plaintiff and Defendants believe that a continuance of the Case Management
7 Conference currently scheduled for July 27, 2007, and all deadlines related to or triggered by said
8 conference, is necessary due to the unavailability of Plaintiff's counsel, and that it would advance
9 the orderly administration of this action by allowing for concurrent hearing of any Rule 12
10 motions, and propose that the Case Management Conference be scheduled for October 5, 2007 at
11 10:30 a.m.;

12 **NOW, THEREFORE, PLAINTIFF AND DEFENDANTS, BY AND THROUGH
13 THEIR RESPECTIVE COUNSEL OF RECORD, HEREBY STIPULATE AND REQUEST
14 THAT THE COURT ORDER AS FOLLOWS:**

15 1. The Case Management Conference, and all deadlines related to or triggered by
16 said conference, be continued until October 5, 2007 at 10:30 a.m.

17 2. The time for Defendant Dimmler to answer or otherwise respond to Plaintiff's
18 First Amended Complaint be extended up to and including August 6, 2007.

19 3. The time for Plaintiff to file its opposition to any Rule 12 motion[s] filed by
20 Defendants be extended up to and including September 7, 2007.

21 4. The time for Defendants to file any reply to Plaintiff's opposition be extended up
22 to and including September 21, 2007.

23 5. The hearing on Defendants' Rule 12 motions against the Amended Complaint, if
24 applicable, will be held on October 5, 2007 at 9:00 a.m., prior to the rescheduled Case
25 Management Conference.

26 6. The hearing on Defendant's Rule 12 motion against Plaintiff's original Complaint,
27 currently set for 9:00 a.m. on July 27, 2007, is hereby taken off calendar. Any issues not mooted
28 by the filing of the Amended Complaint will be addressed at the 9:00 a.m. hearing on

1 October 5, 2007.

2 7. This Stipulation does not constitute a waiver of any defense, including but not
3 limited to, the defense of lack of personal or subject matter jurisdiction, improper venue, or
4 service of process.

5 IT IS SO STIPULATED.

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7 Dated: July 11, 2007

Meredith N. Landy
Joshua D. Baker
O'MELVENY & MYERS LLP

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By: _____/s/ Joshua D. Baker
Joshua D. Baker

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Attorneys for Plaintiff
BERKELEY HEARTLAB, INC.

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Dated: July 11, 2007

Alan I. White
LAW OFFICES OF ALAN I. WHITE

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By: _____/s/ Alan I. White
Alan I. White

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Attorney for Defendant
CHARLES L. DIMMLER III

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Specially Appearing on behalf of Defendants
BERKELEY HEART EUROPE A.S., PAUL L.
ECKBO, and PGH, LTD.

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, AND GOOD CAUSE APPEARING

THEREFORE, IT IS ORDERED:

The Case Management Conference, and all deadlines related to or triggered by said conference, shall be continued. The Case Management Conference in this action will be held on October 26, ~~October 5~~, 2007 at 10:30 a.m.

Defendant Dimmler shall answer or otherwise respond to Plaintiff's First Amended Complaint on or before August 6, 2007.

Plaintiff shall file its opposition papers to any Rule 12 motions filed by Defendant, if applicable, on or before September 7, 2007.

Defendant shall file any reply papers, if applicable, on or before September 21, 2007.

The hearing on Defendant's Rule 12 motions against the Amended Complaint, if applicable, will be held on October 5, 2007 at 9:00 a.m.

The hearing on Defendants' Rule 12 motion against Plaintiff's original Complaint, currently set for 9:00 a.m. on July 27, 2007, is hereby taken off calendar. Any issues not mooted by the filing of Plaintiff's Amended Complaint, if any, will be addressed at the 9:00 a.m. hearing on October 5, 2007.

IT IS SO ORDERED.

Dated: July 12, 2007.

Maxine M. Chesney
The Hon. Maxine M. Chesney
United States District Judge

I, Joshua D. Baker, am the ECF User whose ID and password are being used to file this stipulation re-setting the Case Management Conference and setting the hearing and briefing schedule regarding the First Amended Complaint. In compliance with General Order 45, X.B., I hereby attest that Alan I. White has concurred in this filing.